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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,447	09/28/2001	David Christian Lentz	CRD-0957	2148
27777	7590	01/16/2009		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER RYCKMAN, MELISSA K	
			ART UNIT	PAPER NUMBER
			3773	
			MAIL DATE	DELIVERY MODE
			01/16/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

09/966,447

## Applicant(s)

LENTZ ET AL.

## Examiner

MELISSA RYCKMAN

## Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on claims filed 9/16/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-34 is/are pending in the application.
- 4a) Of the above claim(s) 18-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C2)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/28/08 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kanner (U.S. Patent No. 6,348,064) in view of Swanson et al. (U.S. Patent No. 6,113,612).

Kanner teaches a device for joining substantially tubular organs in a living organism, comprising: an anastomosis device for connecting a graft vessel to a target vessel such that the two vessels are in fluid communication (capable of being used in the manner as described), the anastomosis device including a fastening flange (60B) and a plurality of staples (529) connected to the fastening flange and having sharpened

ends (Fig. 5) with barbs (sharp tips are barbs), the fastening flange comprising a single wire ring structure having a substantially sinusoidally shaped (Fig. 5) configuration for reduced profile delivery (Figs. 9-11) and configured to have a substantially flat profile upon deployment (Fig. 9B) and the plurality of staples (50) being configured to spring from a restraint position (Fig. 5) to a position substantially perpendicular to the ring structure (Fig. 9B) and finally to an inverted loop position through the graft vessel and target vessel (capable of being bent in the manner as described), the plurality of staples (50) extending from the wire ring (60B) structure in the same direction (both extending in the up direction) as the substantially sinusoidally shaped configuration (Fig. 5) and extending substantially beyond the wire ring for inversion (capable of being bent in the manner as described).

Kanner is silent regarding a biocompatible vehicle affixed to the device, however Swanson teaches an anastomosis device wherein the device includes a biocompatible vehicle (522, 530) being made from polymer materials for carrying drugs to facilitate healing and or sealing (Column 13, proximate lines 3-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Kanner with a biocompatible vehicle including a therapeutic agent as taught by Swanson in order to carry drugs to facilitate healing and or sealing of the anastomosis site.

Claims 4-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kanner and Swanson et al.

Although the combination of Kanner and Swanson et al. do not disclose the anastomosis device comprising the polymeric matrix and drugs as claimed, the polymeric matrix and drugs as claimed are well known in the art that are provided on a stent or an anastomosis device in order to deliver drug for treating and healing or preventing restenosis at an implantation site. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the polymeric matrix and drugs as claimed in order to effectively deliver the drug for treating, healing and preventing restenosis at an implantation site.

Regarding to the specific weight percentage of polymers of a copolymer as claimed, it is well known in the art to make a copolymer out of various percentages by weight in order to provide a polymer matrix with a desire property/characteristic. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to varying the property/characteristic of the polymeric matrix by varying the percentages by weight of each residue in order to maximize the property/characteristic of polymeric matrix for use in certain drug application.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA RYCKMAN whose telephone number is (571)272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR  
/Melissa Ryckman/  
Examiner, Art Unit 3773

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773